

## 21 C.J.S. Courts § 316

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### Courts

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### IX. Court Commissioners

#### B. Powers and Immunity

§ 316. Extent of judicial power of court commissioners; hearing and determining controversies

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Court Commissioners](#)  3, 4

**There is authority holding that court commissioners have no authority to exercise ultimate judicial power, but statutory provisions may expressly authorize commissioners to hear and decide specified cases or provide that the parties may stipulate that the court commissioner act as a temporary judge in a specific proceeding.**

There is authority holding that court commissioners have no authority to exercise ultimate judicial power<sup>1</sup> or perform core judicial functions.<sup>2</sup> More specifically, a court's powers to hear, try, or determine a case are nondelegable to a court commissioner,<sup>3</sup> and commissioners may not be given, by statute, the power to make final orders since this would be an unconstitutional vesting of ultimate judicial powers.<sup>4</sup>

On the other hand, statutory provisions often expressly authorize commissioners to hear and decide specified cases, typically, infraction<sup>5</sup> and small claims actions,<sup>6</sup> as well as ex parte,<sup>7</sup> default,<sup>8</sup> or uncontested cases.<sup>9</sup> Moreover, under a statute stipulating that a master commissioner has the same

powers as a magistrate, the commissioner possesses the authority to try a defendant for burglary and theft where a magistrate presiding at a criminal trial has the power to enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense.<sup>10</sup>

### *Chamber powers.*

Under a constitutional provision authorizing court commissioners to perform "like duties as a judge of the court at chambers, subject to revision by such judge," a court commissioner has the power to entertain, try, hear, and determine all actions, causes, motions, demurrers, and other matters not requiring a trial by jury,<sup>11</sup> subject to revision by the judge.<sup>12</sup>

### *Stipulation of parties.*

Pursuant to statutory and constitutional provisions, the parties may stipulate that a court commissioner act as a temporary judge in a specific proceeding.<sup>13</sup> Under a so-called "tantamount stipulation" doctrine, the parties may confer judicial power on a court commissioner by conduct indicating their common intent that the subordinate judicial officer hearing their case do things which generally can only be done by a judge.<sup>14</sup>

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### Footnotes

- 1 Utah—Holm v. Smilowitz, 840 P.2d 157 (Utah Ct. App. 1992).
- 2 Utah—State v. Thomas, 961 P.2d 299 (Utah 1998).
- 3 Wyo.—BAC v. BLM, 2001 WY 83, 30 P.3d 573 (Wyo. 2001).  
  
**Drug court commissioner**  
 Presiding over a jury trial to determine an individual's guilt or innocence of a felony charge is not one of the functions properly delegated to a drug court commissioner.  
  
 Mo.—State v. Ralls, 8 S.W.3d 64 (Mo. 1999).
- 4 Utah—Holm v. Smilowitz, 840 P.2d 157 (Utah Ct. App. 1992).
- 5 U.S.—Franceschi v. Schwartz, 57 F.3d 828 (9th Cir. 1995).  
  
 Cal.—Settemire v. Superior Court, 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).  
  
 Wash.—State v. Moore, 73 Wash. App. 805, 871 P.2d 1086 (Div. 2 1994).
- 6 U.S.—Franceschi v. Schwartz, 57 F.3d 828 (9th Cir. 1995).

Cal.—Settlemire v. Superior Court, 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).

7 Cal.—Guardianship of Slakmon, 83 Cal. App. 3d 224, 147 Cal. Rptr. 777 (1st Dist. 1978).

8 Utah—Holm v. Smilowitz, 840 P.2d 157 (Utah Ct. App. 1992).

Wis.—State ex rel. Perry v. Wolke, 71 Wis. 2d 100, 237 N.W.2d 678 (1976).

9 Cal.—Guardianship of Slakmon, 83 Cal. App. 3d 224, 147 Cal. Rptr. 777 (1st Dist. 1978).

**Divorce**

Court commissioners may not make final adjudications of domestic relations matters other than default or uncontested divorces and modifications.

Utah—Holm v. Smilowitz, 840 P.2d 157 (Utah Ct. App. 1992).

10 Ind.—Scruggs v. State, 637 N.E.2d 175 (Ind. Ct. App. 1994).

11 Wash.—State v. Karas, 108 Wash. App. 692, 32 P.3d 1016 (Div. 2 2001).

**Subordinate judicial duties**

A constitutional provision contemplating the use of court commissioners to perform "chamber business" refers to subordinate judicial duties.

Cal.—In re Brittany K., 96 Cal. App. 4th 805, 117 Cal. Rptr. 2d 813 (1st Dist. 2002).

12 Wash.—State v. Goss, 78 Wash. App. 58, 895 P.2d 861 (Div. 2 1995).

As to revision by the court, generally, see § 321.

13 Cal.—In re Courtney H., 38 Cal. App. 4th 1221, 45 Cal. Rptr. 2d 560 (1st Dist. 1995).

**Domestic matters**

In many cases, attorneys and their clients prefer an experienced court commissioner to hear their domestic matter, but for whatever reason, a party may choose not to stipulate to a commissioner.

Cal.—Settlemire v. Superior Court, 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).

14 Cal.—In re Courtney H., 38 Cal. App. 4th 1221, 45 Cal. Rptr. 2d 560 (1st Dist. 1995).

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